

### **REMARKS**

Applicants appreciate the Examiner's thorough consideration provided in the present application. Claims 1-8 are currently pending in the instant application. Claims 1-4 have been amended. Claim 1 is independent. Claims 9-17 have been cancelled. Reconsideration of the present application is earnestly solicited.

#### **Claim Rejections under 35 U.S.C. 112**

Claims 1 to 4 stand rejected under 35 U.S.C. 112, first paragraph, as allegedly lacking proper support for the term "rubberized." This rejection is respectfully traversed.

In the Office Action mailed on June 18, 2003 (page 4-5), the Examiner states that according to page 5 of the specification, the non-marking materials are described as non-marking rubber, rubber EPDM and plastic.

Before addressing the 112 rejection, Applicant would like to point out that the above Examiner's characterization of the present invention is incorrect in that it implies that "rubber EPDM" is known to be or has been admitted by Applicants to be a non-marking material. This interpretation is respectfully traversed.

EPDM is **not** non-marking by nature. Page 5 of the Disclosure rather calls for non-marking rubber EPDM thus not only for "rubber EPDM" as stated by the Examiner, i.e., non-marking rubber EPDM and rubber EPDM are both discussed. "Non-marking EPDM rubber" and "EPDM rubber" are two different materials and should not be confused. This clarification is believed important to fully understand the merits of the present invention.

In order to clarify the claimed invention for the benefit of the Examiner, Applicants have amended the claims to remove the term "rubberized." In light of the foregoing amendments to the claims, Applicants respectfully submit that these rejections have been obviated and/or rendered moot. However, Applicants submit that the requested changes do not appear to either raise a substantial question of the patentability of the claimed invention nor do they narrow the scope of the claimed invention.

#### **Claim Rejections under 35 U.S.C. 102**

Claims 1, 2 and 4-6 stand rejected under 35 U.S.C. 102(b) as being anticipated by Prevost (United States Patent No. 5,958,527). This rejection is respectfully traversed.

Applicants submit that the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention of claim 1, including the feature(s) of: "said infill layer including *a non-marking particulate material* which is distributed so as to prevent a ball from being marked when the same hits the synthetic grass playing surface, wherein *said non-marking particulate material is selected from a group consisting of: non-marking rubbers and non-marking plastics.*" (emphasis added) Accordingly, this rejection should be withdrawn.

The Examiner states that the granule materials of Prevost "namely rubber, vermiculite, cork, foam plastic, black, cryogenically ground rubber or colored EPDM rubber" are known to have characteristics of being non-marking when a ball comes in contact with the granules. The Examiner also mentions that EPDM rubber as disclosed in Prevost is known to be a non-marking material.

It is respectfully submitted that the above assessments are inaccurate. Colored EPDM rubbers, as the one referred to in Prevost, contains pigments and carbon black which are known to be marking components when mixed with any rubber. In contrast, the variety of EPDM rubbers referred to in the present application is limited to an EPDM that has no marking components.

Page 5, paragraph 24 calls for non-marking EPDM only. Colored EPDM and non-marking EPDM are not the same thing. The former marks while the latter does not. Prevost does not teach selecting non-marking rubber or non-marking plastic, as recited in Claim 1. The rubber and plastic particles referred to in Prevost are marking materials.

The Examiner's rejections appear to be based on the understanding that the colored EPDM disclosed in Prevost is the same material as the non-marking EPDM referred to in the present application. In view of the above explanation, it is now believed that it is clear that there are in fact two very different rubber materials and as such the Examiner's rejection under 102 is no longer appropriate.

Furthermore, it is respectfully submitted that there is no suggestion in Prevost to select any type of non-marking EPDM rubber or other types of non-marking rubbers to form part of the infill layer of the synthetic grass playing surface. Applicants were not aware of the ball marking problems at the time of filing their U.S. Patent No. 5,958,527. The marking tendency of the granules were only observed later on. Therefore, the Prevost reference does not provide a solution to a problem that had not yet been recognized by the inventors.

It is also respectfully submitted that there is no suggestion at all in Prevost to recycle non-marking shoe soles in particulate infill material for synthetic grass playing surface, e.g., as recited in Claim 3. This has even been recognized by the Examiner. Accordingly, Claim 3 should no longer be rejected under 35 U.S.C. 102. For there to be an anticipation, the reference must teach every aspect of the claimed invention. As the Prevost reference is silent as to the use of recycled shoe soles, the Examiner's rejection under 35 U.S.C. 102 is therefore clearly deficient and should be removed.

As to the dependent claims, Applicants respectfully submit that these claims are allowable at least due to their dependence upon an allowable independent claim, as well as for additional limitations provided by these claims.

### **Claim Rejection Under 35 U.S.C. 103**

Claims 3, 7 and 8 stand rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Prevost. These rejections are respectfully traversed.

In light of the foregoing amendments to the claims, Applicants respectfully submit that these rejections have been obviated and/or rendered

moot. As discussed in greater detail herein above with respect to Claims 1, 2 and 4 to 6, Applicants submit that the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention of Claims 1, 2 and 4 to 6. Accordingly, these rejections should be withdrawn.

In accordance with the above discussion of the patent relied upon by the Examiner, Applicants respectfully submit that this document failed to teach or suggest the invention as is set forth by the claims of the instant application. Accordingly, reconsideration and withdrawal of the claimed rejections are respectfully requested. Moreover, Applicants respectfully submit that the application is in condition for allowance.

As to the dependent claims, Applicants respectfully submit that these claims are allowable at least due to their dependence upon an allowable independent claim, as well as for additional limitations provided by these claims.

### **CONCLUSION**

Since the remaining patents cited by the Examiner have not been utilized to reject the claims, but rather to merely show the state-of-the-art, no further comments are necessary with respect thereto.

It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

In the event there are any matters remaining in this application, the Examiner is invited to contact Matthew T. Shanley, Registration No. 47,074 at (703) 205-8000 in the Washington, D.C. area.

Applicants respectfully petition under the provisions of 37 C.F.R. § 1.136(a) and § 1.17 for a three-month extension of time in which to respond to the Examiner's Office Action. The Extension of Time Fee in the amount of **\$475.00** is attached hereto.

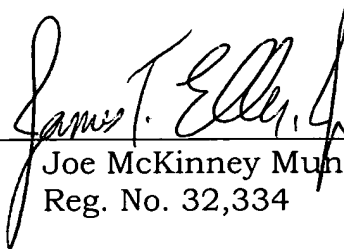
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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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